

EMERGENCY STEEL LOAN GUARANTEE ACT OF 1999
AND THE
EMERGENCY OIL AND GAS GUARANTEED LOAN PROGRAM ACT
Public Law 106-51
Signed August 17, 1999

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GOALS OF THE PROGRAM

- 1) **HELP STEEL AND OIL/GAS FIRMS WHO ARE HURTING:** The intent of the program was to help steel and oil/gas firms that are hurting and can not get credit elsewhere, thereby helping these industries get back on their feet.
- 2) **PROTECT GOVERNMENT FUNDS BY PROVIDING SOUND LOAN GUARANTEES:** The program was intended to be a loan guarantee program -- not a grant program. As Congressman Ralph Regula said in House debate on the programs, “The loan program is not, and I emphasize again, is not a Federal giveaway. It is a tough, self-help program which does have protections for the U.S. taxpayer.”

HOW THE PROCESS WILL WORK

(Actions Listed In Chronological Order)

1) Applications submitted to Board: Applications will be filed by the *lender* (in conjunction with the borrower) to the Board. All applications are due by December 30, 1999. Applicants must submit complete applications by that date. Applications for the Steel program should be sent to: Executive Director, Emergency Steel Guarantee Loan Board, U.S. Department of Commerce, Washington, D.C. 20230. Applications for the Oil and Gas program should be sent to: Executive Director, Emergency Oil and Gas Guaranteed Loan Board, U.S. Department of Commerce, Washington, D.C. 20230. [see Section 400.205 of the regulations]

2) Applications evaluated: Once the application is submitted, it will be reviewed for the following criteria: [see Section 400.207 of the regulations]

- whether the applications comply with the statutory requirements (i.e., whether the borrower has suffered job, financial, or production losses and whether the borrower is unable to obtain credit under reasonable terms and conditions);
- the financial soundness of the loan (i.e., whether the borrower will be able to repay the loan);
- the exposure of the government (i.e., collateral and loan guarantee amount); and
- the expertise and experience of the lender and the lender's ability to service and monitor the loan.

The applicants should endeavor to create the best possible loan package for the Board's review. The Board will also undertake the necessary environmental assessments based on the information provided by the applicant. [see Section 400.206(a) of the regulations]

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- 3) The Board will decide on the applications:** After the reviewing the applications, the Board will make a final decision on each guarantee application and notify applicants of their decisions as soon as possible. After final decisions by the Board, there will be no appeal process. [see Section 400.207(c) of the regulations]
- 4) Loan guarantee application completed:** A Board decision to approve an application will be conditional on completing the necessary agreement and obtaining any necessary regulatory or judicial authorizations. [see Section 400.208 of the regulations]
- 5) Monitoring process begins:** Upon closing of the agreement, the guarantee will be issued and the process of monitoring the loans will begin. [see Section 400.211 of the program regulations]

APPLICATION REQUIREMENTS:

- Application Window

Applications are due by December 30, 1999. Applicants must submit completed applications. Additional application windows may or may not be established at the discretion of the Board if funds are available. Applicants should not assume there will be additional application windows. [see Section 400.205 of the regulations]

- Eligible Companies

The eligibility criteria for steel and iron ore and oil and gas firms is set forth in the legislation. Besides the inability to get credit elsewhere (see below), eligible companies must have suffered job, financial, or production losses. The Board has defined the following terms:

- **job losses, actual financial losses and production losses** will be measured as two distinct points in time. The start date will be January 1, 1998 for steel and January 1, 1997 for oil and gas, the end date will be the date of application for a loan guarantee.

- **substantial assets of a company** is defined as an ownership stake of at least 50 percent. The legislation states that any company that owns “substantial assets” in a company that has suffered job, financial, or production losses is eligible to apply. [see Section 400.200 of the regulations]

- Credit Elsewhere Test

The legislation requires the Board to determine “credit is not otherwise available to that company under reasonable terms or conditions sufficient to meet its financing needs, as reflected in the financial and business plans of that company.” The borrower will have to submit proof that they have been rejected twice. The Board will accept the applicant (lender) as the second rejection. The borrower must submit as part of their application a letter from the first bank stating they have previously been rejected for what is substantially the same loan for which they are applying. [see Sections 400.200(c) of the regulations]

- Eligible Lenders

The legislation states “the Program may guarantee loans provided to qualified steel companies by private banking and investment institutions in accordance with the procedures, rules, and regulations established by the Board.” The Board will not further restrict the definition of an eligible lender other than to mandate that lenders have the expertise and experience necessary to service and monitor the loan adequately. [see Section 400.201 of the regulations]

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- Use of Funds

The Board does not restrict the use of funds, except that they will not allow lenders who want to refinance existing debt they hold. That is, debt refinancing must be done by another lender. The legislation is clear that the purpose of the Program is to foster the health of the firms and the industries. Applications that do not promote the health of the company -- and thereby the industry -- will not be looked upon favorably by the Board.

- Loan Ceilings/Loan Floors

The ceiling for loans to eligible steel companies is set by the legislation at \$250 million and to eligible oil and gas firms at \$10 million. The amount of funding available for iron ore companies is capped at \$30 million. The Board can provide guarantees on loans totaling \$1 billion for steel and iron ore companies, and \$500 million for oil and gas companies. The Board has not set floors for the programs. [see Section 400.202 of the regulations]

- GAO Audit/Independent Financial Audit

The legislation requires that “the [borrower] has agreed to an audit by the General Accounting Office prior to the issuance of the loan guarantee and annually thereafter while any such guaranteed loan is outstanding.” The borrower will be required to agree to the GAO audit as well as an independent audit. In addition, an independent financial audit acceptable to the Board must be submitted as part of the application. [see Section 400.205 (b)(8) of the regulations]

- Guarantee Amount

The legislation sets the maximum guarantee rate at 85 percent. The Board will not mandate a set guarantee rate for applications. One factor the Board will use to evaluate applications is the adequacy of proposed provisions to protect the Government, including the percentage of the guarantee requested. [see Sections 400.203 and 400.207 of the regulations]

- Interest Rate

The Board will not set an interest rate for the loans to be guaranteed. However, if the Board determines the interest rate is unreasonably high, the guarantee application will be rejected. [see Section 400.204(b) of the regulations]

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- **Loan Repayment**

Steel loans must be repaid by December 31, 2005 and oil/gas loans must be repaid by December 31, 2010. Of course, shorter-term loans are eligible for a guarantee. [see Section 400.204(a) of the program regulations]

- **Collateral/Lien Positions**

The Board will require a first lien on all collateral acquired by or improved with the loan proceeds. On other property/assets, the Board will require first lien or equal footing with other creditors. One factor the Board will use to evaluate applications is the adequacy of proposed provisions to protect the Government, including the government's lien position. The Board will only guarantee loans – that is the Board will not guarantee bonds. [see Section 400.204 of the program regulations]

- **Restrictive Covenants**

The legislation allows the Board to set “such affirmative and negative covenants and other protective provisions that the Board determines are appropriate.” Therefore, the Board expects loan guarantees to include all regular and customary covenants and will give preferences to those applicants that include covenants that make it more likely that the loan is repaid. [see Section 400.211 of the program regulations]

- **Sale of Guaranteed Loan/Participation Interests**

The Board will allow the lender to sell participations in the guaranteed loan at their discretion. However, the original lender will remain responsible for servicing the loan even after sale of any participation interest. If a borrower would like to assign or sell the guarantee, they must obtain prior written approval of the Board. The Board will not allow a secondary market for the guaranteed loans. [see Section 400.210 of the regulations]

- **Administrative Fee**

The legislation provides for both programs the payment of an administrative fee not to “exceed an amount equal to 0.5 percent of the outstanding principal balance of the guaranteed loan.” The Board has set the fee as a one-time 0.5 percent payment due in full by the end of the first year of their loan. [see Section 400.208(d) of the program regulations]

- **Regulatory Compliance with Federal and State Laws, Rules and Regulations**

As part of the guarantee agreement, all lenders and borrowers must document that they are in complete compliance with all Federal and state laws, rules and regulations. For example, bankrupt firms will be required to have their presiding judges approval before the final guarantee is signed. [see Sections 400.208 of the regulations]

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EVALUATION PROCESS:

(see Section 200.208 of the regulations)

The Board will evaluate applications based on three criteria. They are (in order of importance):

1. The ability of the borrower to repay the loan;
2. Provisions to minimize the exposure of the Government (e.g., collateral and loan guarantee amount);
3. The expertise and experience of the lender and the lender's ability to service and monitor the loan.

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